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July 27, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Carol Matthey
Deputy Chief, Common Carrier Bureau
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Ex Parte*
"Project Pronto"
CC Docket No. 98-141
ASD File No. 99-49

Dear Ms. Matthey:

MGC Communications, Inc. d/b/a Mpower Communications Corp. ("Mpower") submits these comments in response to SBC's proposed voluntary commitments in connection with its planned deployment of Project Pronto. Mpower emphasizes that what is at stake here is whether SBC and other ILECs can deploy fiber in the loop in ways that undermine their key market-opening obligations under Section 251 of the Act. The Commission's objective should be to assure that improvements in loop technology are implemented and made available to competitive carriers in ways that help achieve, rather than thwart, the pro-competitive goals of the Act. The ILECs' obligation to provide meaningful access to the network, regardless of medium (*e.g.* copper or fiber) should grow in response to technological change and demand (wholesale and retail) and not be artificially constrained by the type of limits and restrictions that SBC seeks to establish for Project Pronto. SBC's proposed voluntary commitments require substantial modification and clarification in certain respects before they could provide a basis that will assure meaningful competitive access today and in the future.

Voluntary Commitments Are Inadequate

As a threshold matter, the Commission should reject SBC's concept that its commitments would be voluntary. If genuinely voluntary, SBC could terminate or substantially modify these commitments at any time. This would not provide a basis on which CLECs could realistically rely in order to invest in facilities and make service commitments to customers. Similarly, it is necessary that commitments have a longer duration than the three years of the SBC/Ameritech merger conditions. CLECs cannot realistically make business plans on the basis of access to loops for only three years. Accordingly, the Commission should establish the requirements requested by CLECs as modified conditions of the SBC/Ameritech merger, or as conditions of any waiver of the merger conditions, and should provide that they will continue in effect until further order of the Commission. The Commission should also make clear that any such commitments and conditions apply to all of the SBC operating companies, and any future operating companies that SBC may acquire, as well as any future owner of any of these entities.

Requirements Must Not be Deferred to Industry Collaboratives

SBC's proposed use of industry collaborative is essentially a way of deferring, and potentially completely avoiding, any obligation to provide meaningful access to loops. It proposes to provide access to both the existing and future features and functions of Project Pronto-enabled loops "subject to" issues that will be discussed in the proposed industry collaboratives including how its costs will be recovered, pertinent "commercial arrangements," and whether CLEC requests for access will reduce the capacity of remote terminals to meet forecasted demand. Apparently, in the context of an industry collaborative and in the absence of clear Commission rules, SBC could simply choose to not agree to provide CLECs meaningful access or insist on terms and conditions that would preclude meaningful access. For example, SBC could insist on unreasonable pricing. Or, it could employ unrealistic demand forecasting as a basis for denying CLEC access. It is virtually impossible to know what pertinent "commercial arrangements" may refer to and potentially provides a host of opportunities for SBC to stall or deny access. Instead of leaving these key decisions to SBC's discretion in future collaboratives the Commission should identify now what features and functions SBC will be required to provide. It also worth noting that SBC has left its proposed performance measures undefined. These should be defined now.

Non-Discrimination Is Insufficient

SBC proposes that existing and future features and functions of Project Pronto-enabled loops will be made available on nondiscriminatory rates, terms, and conditions. This means that SBC will offer these features and functions to its advanced services affiliate on the same terms and conditions as CLECs. However, this is an insufficient safeguard because this would permit SBC to offer essentially unreasonable rates, terms, and conditions for features and functions that its separate affiliate does not want, such as features and functions that enable CLECs to offer services other than ADSL. While the separate affiliate is a useful tool against discrimination, it is inadequate to safeguard against SBC's ability to jointly plan provision of advanced services with its affiliate and provide only the underlying network functions and features on reasonable terms and conditions that

will support those plans while thwarting the plans of CLECs to provide other services and functions. Project Pronto is a clear example of this in that SBC's starting point has been that it will only make available to CLECs the features and functions that will support its affiliate. The Commission must therefore go beyond a nondiscrimination standard and closely define the features and functions that SBC must provide to CLECs and the rates terms and conditions thereof.

SBC Must Provide Space at Remote Terminals

SBC's proposal to make space available in or adjacent to remote terminals is grossly inadequate. There should not be any distinction between existing and future space and SBC should have an absolute commitment to provide the space necessary to accommodate CLEC requests for collocation. In this connection, SBC's distinctions between huts, CEVs, and cabinets are vague and undefined and provide an opportunity for it to manipulate its commitments depending on how it labels any particular installation. SBC should be required to provide adequate space at remote terminals regardless of what label SBC applies to any particular installation. Further, SBC's proposed use of SCA's to provide additional space is inadequate because, like industry collaboratives, this essentially leaves resolution of meaningful access to remote terminals to future negotiation with the ILEC. Moreover, the proposed "actual cost" standard conflicts on its face with the forward-looking cost methodology governing UNEs.¹ SBC should be required to provide collocation space to CLECs at remote terminals based on a forward-looking cost methodology. Mpower has had considerable experience with Ameritech and other companies in attempting to use the SCA process for provision of additional collocation space. This process leads to very substantial delay and expense. By itself, the SCA process constitutes a formidable barrier to entry and to provision of competitive services.

Mpower emphasizes that the remote terminal is part of the local loop. As such, the remote terminal is part of bottleneck facilities subject to the key unbundling and interconnection obligations of Section 251(c) of the Act. For this reason, it is SBC's obligation to provide adequate space for CLECs to collocate and to make necessary plans and expenditures to do so. While SBC may choose to make projections for retail or wholesale demand that could affect collocation, SBC properly bears the risk of erroneous projections. SBC must meet demand for collocation space regardless of its projections. It is also worth noting that it is particularly important for SBC (and other ILECs) to have the obligation to provide adequate space at remote terminals because CLECs do not enjoy the same access to rights of way as ILECs.

Existing Copper Must be Maintained

¹ Although *Iowa Utilities Board v. FCC*, Case No. 96-3321 (D.C. Cir. July 18, 2000) invalidated use of most efficient network models for determining forward-looking pricing of UNEs, it did not invalidate forward-looking pricing for UNEs.

SBC has not made any meaningful commitment to preserve copper loops and makes clear that it reserves the ability to retire copper after Project Pronto is deployed because it only states that it has no present intention to retire copper plant. However, in order to assure that CLECs can provide facilities-based competition SBC must be required to maintain existing copper loops between the central office and customer premises. As discussed, SBC's commitments for only a few years do not provide a realistic basis for CLECs to formulate or implement business plans. Mpower believes that it would be preferable for conditions applicable to Project Pronto remain in effect until further order of the Commission. This should include a requirement that SBC maintain copper loops until further order of the Commission but for at least ten years. This would provide a realistic basis for CLECs to implement business plans based on access to copper loops as UNEs. The Commission has previously recognized that an assurance of use of authorized facilities of this time period is realistically necessary to support planning and substantial investments in communications facilities and services such as radio spectrum.² This obligation should extend to copper subloops as well.

Obligations Should Extend Beyond NGDLC Loop Architecture

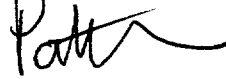
SBC's proposed voluntary commitments present an overarching concern in that it seeks generally to limit its obligations to "situations where SBC/Ameritech deploys a NGDLC architecture that supports POTS and xDSL services ..." The Commission should reject this limitation. First, as pointed out by other commenters, SBC has failed to provide adequate meaningful information, such as end user locations served by remote terminals, that would enable CLECs to determine where to collocate. Moreover, there is no reason why the anticompetitive features of restricted access to non-NGDLC remote terminals and other network components should remain in place. Accordingly, the Commission should require SBC to provide the same access to remote terminals, dark fiber, and loop facilities.

Finally, the Commission should make clear that any requirements imposed on Project Pronto are subject to any future generic or other proceedings examining remote terminal and fiber-in-the-

² See e.g., *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2Ghz for Use by the Mobile-Satellite Service*, ET Docket No. 95-18, FCC 00-233, released July 3, 2000.

loop issues. This will permit the Commission to establish more thorough and complete rules as further experience and the record in any such proceeding require.

Sincerely,



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